



May 9, 2000

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2000-1788

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135363.

The Texas Department of Criminal Justice ("TDCJ") received a request for "all documents relating to the termination" of a named individual. You have provided for our review "exemplars" of documents that are responsive to the request. You indicate the responsive information may also include a videotape, but that the information provided for our review "should show what would be on the videotape."<sup>1</sup> You assert that the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You make no arguments in support of the section 552.101 assertion. However, we note that the submitted documents include certain documents, which we have marked, that contain information that pertains to the treatment of a patient by a physician. We believe release of this information is governed by the Medical Practice Act, found at subtitle B of title 3 of the Occupations Code. Section 159.002(b) of that Act states:

---

<sup>1</sup>See Gov't Code § 552.002(b)(4) (the media on which public information is recorded includes tape). In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

*See* Occ. Code § 159.002(b). Sections 159.003 and 159.004 provide for exceptions to this confidentiality provision, that generally do not appear to apply in this instance. However, section 159.004(5) excepts information otherwise subject to this provision where TDCJ has obtained written consent for release of the information from the patient or the patient's authorized representative. *See* Occ. Code §§ 159.004(5), 159.005. Thus, unless TDCJ receives proper written consent to release the information to the requestor, we determine you must withhold this information in its entirety. We have marked the documents at issue.

Section 552.131(a) relating to TDCJ inmates states in pertinent part:

Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

In relevant part, section 552.029 provides:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

. . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Section 552.131 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, or an incident involving the use of force is subject to required disclosure. Some of the documents, which we have marked, pertain to an incident involving the use of force against a TDCJ inmate. In connection with the use of force incident, the inmate is indicated to have been charged with an alleged crime. Accordingly, while TDCJ must generally withhold these documents under section 552.131 because they contain information about an inmate, TDCJ must release basic information contained in these documents pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and TDCJ officials directly involved, a brief narrative of the incident, a brief description of any injuries

sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident.

We have identified certain additional documents which either contain no information about an inmate, or contain only inmate information made public under section 552.029. *See* Gov't Code § 552.029. These documents are therefore are not subject to the section 552.131 exception.

You assert that information is excepted from disclosure by section 552.107 in conjunction with the decision of the court in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and vacated in part*, 679 F.2d 1115 (5<sup>th</sup> Cir.), *amended in part*, 688 F.2d 266 (5<sup>th</sup> Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Section 552.107(2) states that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." The *Ruiz* decision restricted the dissemination of "sensitive information" regarding inmates. The *Ruiz* final judgment, entered December 11, 1992, gave the Board of Criminal Justice (the "Board") authority to define the term "sensitive information." The Board met on January 21, 2000, and decided that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." Thus, information in the categories delineated in section 552.029 of the Government Code is not excepted from required public disclosure by section 552.107(2) in conjunction with the *Ruiz* court order. Therefore, the documents that we have identified as containing no information about an inmate, or that contain inmate information that is made public under section 552.029, are not excepted from disclosure by any of the exceptions you have asserted. We therefore conclude that these documents, which we have marked, must be released.

However, as to the documents that we determine are not excepted from required disclosure by the exceptions you have asserted, we note that some of them contain information that must be withheld under section 552.117 of the Government Code. In relevant part, this provision states:

Information is excepted from the [public disclosure] requirements of Section 552.021 if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

...

(3) an employee of the Texas Department of Criminal Justice[.]

We have marked the information at issue in these documents, consisting of the social security numbers and home addresses of certain TDCJ employees. You must redact this information from the documents prior to their release.<sup>2</sup>

In summary, you must withhold in their entirety the documents we have marked as subject to the Medical Practice Act, as release of this information may be made only in accordance with that Act. You must also withhold the documents that we have marked as subject to section 552.131, except you must release the basic information in these documents, as described above. The remaining documents are not excepted from required disclosure and must be released, but you must first redact from these documents the section 552.117 information that we have marked.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

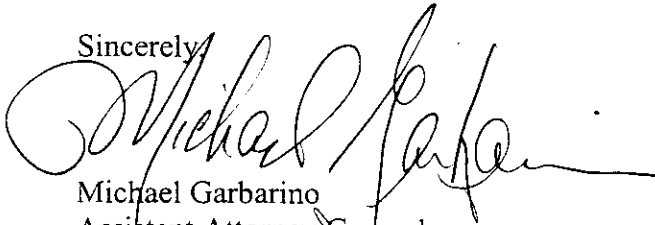
---

<sup>2</sup>We have placed a blue flag on the documents that are subject to release and that also contain section 552.117 information that must first be redacted. We note that the requestor in this instance is an attorney who is representing a former TDCJ employee. Section 552.023 of the Government Code provides a special right of access to a person or a person's authorized representative, beyond the right of the general public, to information that relates to the person and that is otherwise protected from required disclosure by laws intended to protect the person's privacy. See Gov't Code § 552.023. Therefore, we have not marked for redaction the section 552.117 information of the named employee.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/ljp

Ref: ID# 135363

Encl. Submitted documents

cc: Ms. Sandee Hart  
Law Offices of David Dies  
1009 Green Street  
Orange, Texas 77630  
(w/o enclosures)